

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-14-04)
MICHAEL AND TERI HAGER
MARCH 24, 2015

A report to the Flathead County Board of Adjustment regarding a request by Michael and Teri Hager for a variance to the front and side yard setback requirements found in Section 3.08.040(1)(A) Flathead County Zoning Regulations (FCZR) and Section 5.01.030(2) FCZR which states, “*No accessory structure except fences or hedges shall be constructed in the front yard. Accessory structures shall not be located any closer than five (5) feet to a rear or side lot line. Signage shall be located on a lot in conformance to requirements of Chapter V.*” The variance requested would apply to property located at 664 Echo View Drive, is zoned “SAG-5 Suburban Agricultural” and located within the Echo Lake Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on April 7, 2015 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The Bigfork Land Use Advisory Committee will hold a public hearing on March 26, 2015. This section will be updated following the meeting.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on April 7, 2015. This section will be updated following the meeting.

II. GENERAL INFORMATION

A. Application Personnel

i. Landowner

Michael and Teri Hager
821 2nd Road NE
Fairfield, MT 59536

ii. Technical Representative

William Tanner
688 Echo Lake Road
Bigfork, MT 59911

B. Property Location

The subject property is approximately 0.622 acres in size, is located at 664 Echo View. The property can be legally described as Lot 74 of Echo Acres Addition No. 1 Subdivision in Government Lot 11 Section 08, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

Figure 1: Aerial of the subject property (outlined in red)



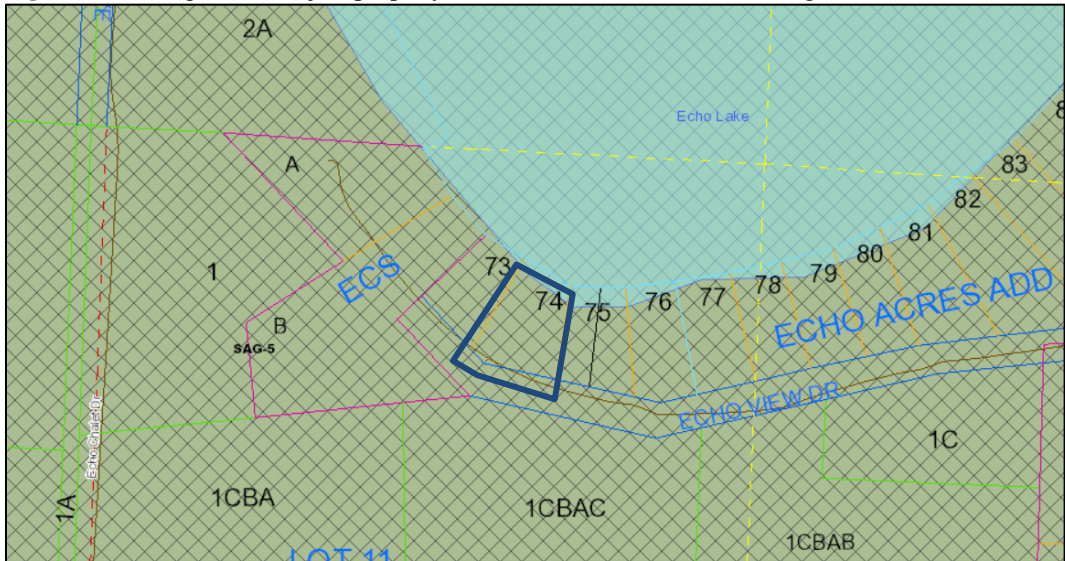
C. Existing Land Use(s) and Zoning

The subject property is located in the Echo Lake Zoning District and zoned 'SAG-5 Suburban Agricultural.' SAG-5 is defined as, *"A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development,"* [per Section 3.08.010 FCZR]. The property currently contains a single family residence with a one car garage and a dock. The property is located on Echo Lake with a tree on each side of the house and some bushes.

D. Adjacent Land Use(s) and Zoning

The property is located on Echo Lake and directly north of the property is the lake. Properties immediately to the south, east, and west of the subject property are zoned similarly zoned "SAG-5 Suburban Residential," (See Figure 2). The properties to the east and west of the subject property are single family residential on lots similar in size to the subject property. The properties to the south are approximately 5 acres in size and contain single family houses and some are vacant.

Figure 2: Zoning of the subject property (outlined in blue) and surrounding area



E. Summary of Request

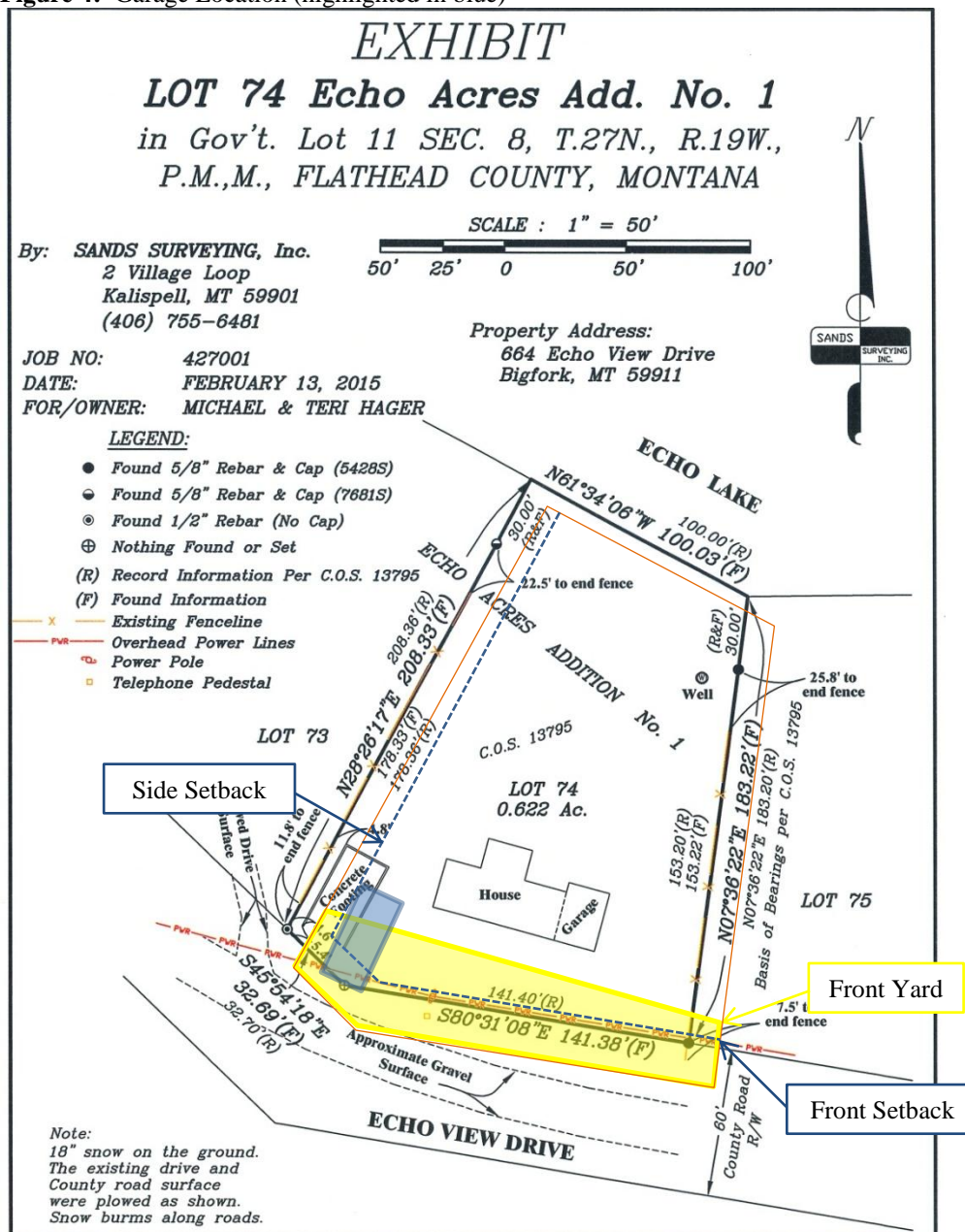
The applicant is requesting a variance to construct a detached garage within the front and side yard setbacks and in the front yard; this is a result of a zoning violation (FZT-14-32). According to the application the garage would be used to store a boat, seadoo and garden equipment. The existing footings of the proposed garage are approximately 19 feet 4 inches wide by 38 feet long. The concrete footings are located 4.6 to 4.8 feet from the side property line and between 5.4 feet and 10 feet from the front property line. The side setback for the SAG-5 zone is 5 feet and the front setback is 20 feet from the edge of right-of-way.

Figure 3: Location of proposed garage



The property is zoned 'SAG-5 Suburban Agricultural' and an accessory structure shall not be constructed in the front yard. Section 5.01.030(2) Flathead County Zoning Regulations (FCZR) which states, "No accessory structure except fences or hedges shall be constructed in the front yard. Accessory structures shall not be located any closer than five (5) feet to a rear or side lot line. Signage shall be located on a lot in conformance to requirements of Chapter V." The front yard is defined as, "A yard extending between side lot lines across the front of a lot," [Pursuant to Section 7.23.020]. According to staff site visit and the site plan 26 feet of the garage would be within the front yard (see Figure 4 below). The applicant is requesting a variance to construct a garage in the front yard of the subject property and within the side and front yard setbacks.

Figure 4: Garage Location (highlighted in blue)



F. Compliance with Public Notice Requirements

Notification was mailed to adjacent property owners within 150 feet of the subject property on March 18, 2015 pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the March 22, 2015 edition of the Daily Interlake.

G. Agency Referrals

Agency referrals were sent to agencies listed below regarding the variance request.

- Bigfork Fire District
 - Reason: The property is located within the Bigfork Fire District and has the potential to impact services.
- Flathead City-County Health Department
 - Reason: The property is located within the department's jurisdiction.
- Flathead County Public Works Department
 - Reason: The property is located within the department's jurisdiction, and has the potential to impact county facilities.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Bigfork Land Use Advisory Committee meeting scheduled for March 26, 2015 and at the Board of Adjustment meeting scheduled for April 7, 2015.

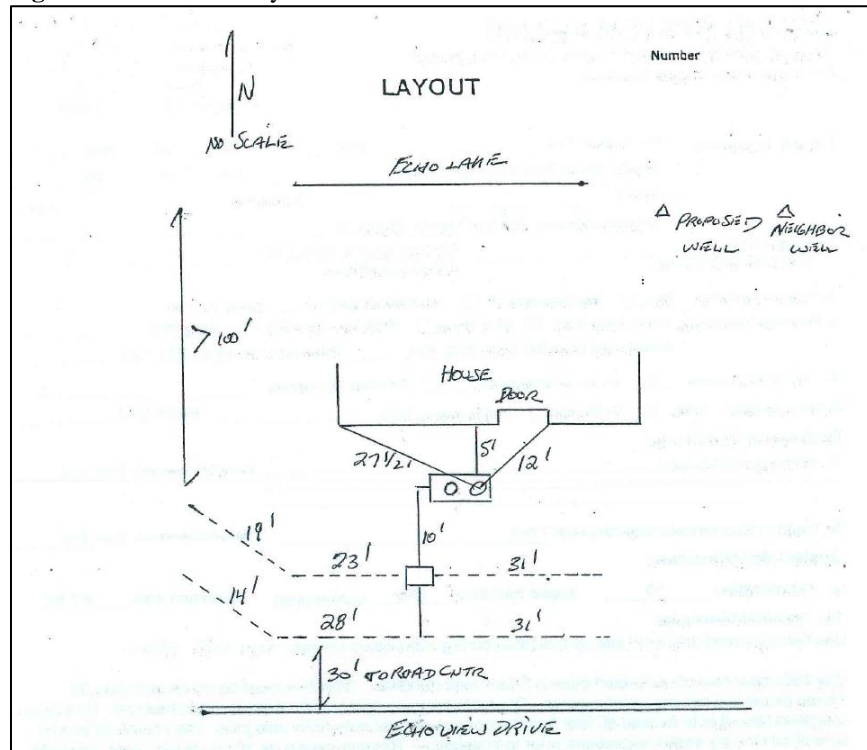
B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department
 - Comment: "The drainfield serving the individual living unit is located between the existing house and Echo View Drive (see septic permit #99-3588N). In accordance with Flathead County Regulations for Onsite Sewage Treatment Systems, Section 10-Minimum Requirements for Class 1-3 Sewage Treatment Systems, '(3) No component of any sewage treatment system shall be located under driveways, parking areas or areas subject to heavy loading and no vehicles shall be driven over the system after installation, except those portions properly installed to accept traffic loads. No component part of any sewage treatment system shall be installed in an area that might later be used for building additions, garages, sheds or other structures that will restrict immediate access to any portion of the system for necessary maintenance and repair. NOTE: No absorption system shall be placed under driveways, roadways, parking areas or areas that may be subject to continued/periodic vehicular traffic, regardless of design and installation. Soil absorption fields shall be adequately protected (e.g., fenced) to prevent trampling by livestock or damage from

vehicular traffic.' The garage cannot not be constructed between the house and Echo View Drive where the existing drainfield is located."

Figure 5: Drainfield Layout



- Bigfork Fire Department
 - Comment: "Bigfork Fire Department supports the request for FZV-14-04 Hager Zoning Variance." Email dated December 4, 2014.
- Flathead County Road and Bridge Department
 - Comment: "At this point the County Road Department does not have any comments on this request." Letter dated December 4, 2014.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states "No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case."

A. Strict compliance with the provisions of these regulations will:

i. Limit the reasonable use of property;

The applicant believes strict adherence to setback and accessory structure placement requirements would prevent a garage to be built for storage of boats and other equipment, which is enjoyed by many others on the street. The proposed garage would be approximately 19 feet 4 inches wide and 38 feet long. According to staff site visit and the site plan 26 feet of the concrete footings would be located within the front yard. The footing are 4.6 to 4.8 feet from the side property line and between 5.4 feet and 10 feet from the front property line. The side setback for the SAG-5 zone is 5 feet

and the front setback is 20 feet from the edge of right-of-way. Comments from the Environmental Health indicated that the accessory structure may be located on a drainfield. If that is the case Environmental Health states, "The garage cannot not be constructed between the house and Echo View Drive where the existing drainfield is located."

The property currently contains a house with a single car garage and a dock for lake access. Based on the submitted site plan and staff's site visit there appears to be room outside the front yard to accommodate the second detached garage. The garage could be constructed in-line with the house on the east side of the house instead of the west side to avoid any issues with the drainfield. The house would then be outside of the front setback and the front yard. The garage could be set 5 feet from east property line which would place it outside the side setback. It does not appear that strict compliance with the regulations would limit the reasonable use of the property.

Finding #1 - Strict compliance with the regulations would not limit the reasonable use of property because the applicant would be able to construct the detached garage in accordance with the setbacks and outside the front yard without a variance.

ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.

The application states, "Based on the policy which would prevent a garage to be built for the storage of boats and other equipment, which is enjoyed by many others on the street."

During the site visit, staff observed many properties on Echo View Drive in the vicinity that similarly have accessory structures located within the front yards and some appear to be situated within the front setbacks. In some cases buildings are constructed only a few feet from the right-of-way. The regulations would not prevent the property owner from constructing a garage on the property to store boats and other equipment because as previously stated the applicant would be able to construct the accessory structure in-line with the front of the house, this would put the structure outside of the front setback and outside of the front yard. And there is room between the house and the property line to accommodate the proposed structure outside of the side setback.

Finding #2 - Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties on Echo View Drive because the applicant would be able to construct the detached garage in accordance with the setbacks and outside the front yard without a variance.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

The application states, "There is a question of what is the front of the house, the road or the lake. The way the house sits on the property it would not allow for a garage to be built on either side." The front of an interior lot is defined by Section

7.12.090 as, *“The front property line of an interior lot shall be the line bounding the street frontage.”*

As previously stated, the subject property is located on Echo Lake and the rear of the property is located within the Lakeshore Protection Zone. The Lakeshore Protection Zone is defined as, “The land area within twenty (20) horizontal feet of the perimeter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation.” A storage building such as a garage or a boat house is not permitted within the lakeshore protection zone, making the area unbuildable for the proposed garage.

The subject property is 208.33 feet long from the right-of-way to the low water on the west side and 182.22 feet long from the right-of-way to the low water on the east side (see Figure 4). Staff used aerial photography to roughly determine that the mean high water and determined that the property is approximately 180 feet long from right-of-way to the mean annual high water on the west side and approximately 170 feet long extending from the right-of-way to the mean annual high water on the east side. This leaves 140 feet on the west property line and 130 feet on the east for construction of a garage when the front setbacks and Lakeshore Protection Zone are taken into consideration.

According to the site plan the existing house is approximately 43 feet from the east property line. The garage is 19 feet 8 inches wide and would be able to fit between the house and east property line while remaining outside of the Lakeshore Protection Zone, the front yard and the setbacks.

The property is sloped downward from the road toward the lake and the north side of the property is designated as Zone A on FEMA FIRM Panel 30029C2310G. Zone A is defined as, “Special flood hazard areas subject to inundation by 1% annual chance floor” or 100 year floodplain. However, the majority of the property is located outside of the 100 year floodplain and a structure could be built on either side of the house and remain outside of the floodplain.

Finding #3 – The alleged hardship does not appear to be the result of lot size, shape or topography because the garage could be constructed outside of the Lakeshore Protection Zone and 100 year floodplain while in accordance with the applicable zoning regulations.

C. The hardship is peculiar to the property.

As previously stated, the subject property is 208.33 feet long from the right-of-way to the low water on the west side and 182.22 feet long from the right-of-way to the low water on the east side. Staff used aerial photography to roughly determine that the mean high water and determined that the property is approximately 180 feet long from right-of-way to the mean annual high water on the west side and approximately 170 feet long extending from the right-of-way to the mean annual high water on the east side. This leaves 140 feet on the west property line and 130 feet on the east for construction of a garage when the front setbacks and Lakeshore Protection Zone are taken into consideration.

According to the site plan the existing house is approximately 43 feet from the east property line. The garage is 19 feet 8 inches wide and would be able to fit

between the house and east property line and remain outside of the Lakeshore Protection Zone.

Other properties in the neighborhood are similarly located on Echo Lake within the Lakeshore Protection Zone and the 100-year Floodplain in the rear of the lot. The application states, “No, it applied to all houses on the street.”

Finding #4 – The alleged hardship does not appear to be peculiar to the subject property because the accessory structure could be placed in compliance with the applicable zoning regulations and other properties in the neighborhood are located within the Lakeshore Protection Zone and the 100-year Floodplain.

D. The hardship was not created by the applicant.

According to the applicant, “The Hardship was not created by the applicant, it applies(sic) to the street.”

The property owner started construction of the building prior to applying for the variance to construct within the front and side yard setbacks and within the front yard. Had the applicant constructed the building in-line with the house on the east side of the house instead of the west side instead of the west side to avoid any issues with the drainfield. The house would be outside of the front setback and the front yard. The garage could be set 5 feet from east property line which would place it outside the side setback. There appears to be adequate space on the lot to construct the detached garage without a variance and therefore the alleged hardship appears to have been created by the applicant.

Finding #5 – The alleged hardship appears to have been created by the applicant because the foundation could have been poured in-line with the existing house and it would not be in the front yard or the front setback and there appears to be ample room to construct the accessory structure outside of the side setback between the house and the east property line.

E. The hardship is not economic (when a reasonable or viable alternative exists).

This request is a result of a previous zoning violation and the applicant has already constructed the concrete footing for the proposed garage. A stop work order was posted on the property on October 24, 2014 when it was determined that the location of the structure was in violation of the Flathead County Zoning Regulations. The applicant requested the variance after the construction of the garage had already started.

As previously stated, comments from the Environmental Health indicated that the accessory structure may be located on a drainfield. If that is the case Environmental Health states, “The garage cannot not be constructed between the house and Echo View Drive where the existing drainfield is located.” According to the site plan the existing house is approximately 43 feet from the east property line. The garage is 19 feet 8 inches wide and would be able to fit between the house and the east property line while remaining outside both the side and front setbacks and front yard. It appears that the hardship is economic because a reasonable alternative exist.

Finding #6 – Reasonable alternatives exist that would not require a variance from the regulations because the garage could be constructed on the east side of the house in compliance with the bulk and dimensional requirements.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The application states, “The granting of the variance would conform with other properties in the neighborhood. No adverse effect.”

The property is located near the end of a dead-end road with neighbors on both sides. During the site visit, staffs observed many properties on Echo View Drive in the vicinity similarly have accessory structures located within the front yards and some appear to be situated within the front setbacks. In some cases buildings are constructed only a few feet from the right-of-way.

As previously stated this variance is the result of a zoning violation (FZT-14-32), the original complaint states, “Building garage too close to our fence also blocking our exit driveway, forcing us to make a new one.” It is likely that the location of the accessory structure could have an impact on the neighboring property.

Finding #7 – Granting of the variance request could have an adverse affect on the neighboring properties or the public because this variance is a result of zoning violation, where the original complainant states that the location of the structure impacts his access.

G. The variance requested is the minimum variance which will alleviate the hardship.

The application states, “Allow the variance will allow the applicant to store and park his boat and equipment.” The applicant’s boat and equipment can be stored in a garage without the variance, if the location of the garage was moved outside of the setbacks and front yard.

As previously stated, it appears the applicant has the ability to move the location of the garage and comply with the regulations. Based on the submitted site plan and staff’s site visit there appears to be adequate space on the east side of the house to accommodate the detached garage. The garage could be constructed in-line with the house and would be outside of the front setback and the front yard. The garage could be set 5 feet from east property line which would place it outside the side setback. The request does not appear to be the minimum required because another alternative exist that would not require a variance.

Finding #8 – The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because there is an alternative that exist such as building the garage in-line with the existing house on the east side and outside the side setback which would eliminate the need for the variance.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

The application states, “Other neighboring properties on the street benefit (sic) from the same variance.” During the site visit, staff observed many of the homes

located on Echo View Drive with accessory structures located within the front yard (as shown in Figure 5) and many of the structures appear to have been constructed within the setback.

Granting the variance to allow the applicant to build to front and side setback as well as allowing an accessory structure in the front yard would not appear to confer a special privilege that is denied other properties located along Echo View Drive.

Figure 5: Echo View Lane



Finding #9 – Granting of the variance is not likely to confer a special privilege that is denied to other properties in the district because other properties in the vicinity appear to have built accessory structures in the setbacks and within the front yards.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations would not limit the reasonable use of property because the applicant would be able to construct the detached garage in accordance with the setbacks and outside the front yard without a variance.
2. Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties on Echo View Drive because the applicant would be able to construct the detached garage in accordance with the setbacks and outside the front yard without a variance.
3. The alleged hardship does not appear to be the result of lot size, shape or topography because the garage could be constructed outside of the Lakeshore

Protection Zone and 100 year floodplain while in accordance with the applicable zoning regulations.

4. The alleged hardship does not appear to be peculiar to the subject property because the accessory structure could be placed in compliance with the applicable zoning regulations and other properties in the neighborhood are located within the Lakeshore Protection Zone and the 100-year Floodplain.
5. The alleged hardship appears to have been created by the applicant because the foundation could have been poured in-line with the existing house and it would not be in the front yard or the front setback and there appears to be ample room to construct the accessory structure outside of the side setback between the house and the east property line.
6. Reasonable alternatives exist that would not require a variance from the regulations because the garage could be constructed on the east side of the house in compliance with the bulk and dimensional requirements.
7. Granting of the variance request could have an adverse affect on the neighboring properties or the public because this variance is a result of zoning violation, where the original complainant states that the location of the structure impacts his access.
8. The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because there is an alternative that exist such as building the garage in-line with the existing house on the east side and outside the side setback which would eliminate the need for the variance.
9. Granting of the variance is not likely to confer a special privilege that is denied to other properties in the district because other properties in the vicinity appear to have built accessory structures in the setbacks and within the front yards.

VI. CONCLUSION

Upon review of this application, the request to allow for a variance to allow for an accessory structure within the front and side yard setbacks and to allow the accessory structure within the front yard of the property is not supported by the review criteria and the Findings of Fact listed above. Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application and the request does not appear to have met all the review criteria.

Planner: EKM